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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

Daniel Draney, and Lorenzo Ibarra,
individually and on behalf of all others
similarly situated,

Plaintiffs,

vs.

Westco Chemicals, Inc.; Ezekiel “Alan”
Zwillinger; and Steven Zwillinger,

Defendants.

Case No. 2:19-cv-01405-ODW-AGR

**PLAINTIFFS’ NOTICE
REGARDING SETTLEMENT;
REQUEST TO CERTIFY CLASS;
AND REQUEST FOR TRIAL
DATES**

I. NOTICE REGARDING SETTLEMENT

The parties reached a tentative global settlement resolving all claims on a class-wide basis in this action. *See* Notice of Settlement, Dkt. Nos. 57 and 60. Among other benefits, the tentative class-wide settlement would have provided the putative class with a \$500,000.00 common fund benefit. The Court refused to preliminarily approve the tentative settlement, in part, because of questions concerning whether \$500,000.00 was sufficient to compensate all class members. *See* Dkt. No. 62. The Court provided the parties with “suggestions regarding the type of modifications the parties would need to make to the settlement before the Court [would] approve it.” *See* Dkt. No. 77.

The parties took the Court’s suggestions seriously and negotiated a revised settlement agreement. The revised settlement agreement would have provided the putative class with a \$625,000.00 common fund benefit. *See* Dkt. No. 79. Defendants, however, refused to agree that class members could opt out of the revised settlement if class members were not satisfied with the settlement. The parties thereafter submitted the revised settlement to the Court for preliminary approval, consistent with the Court’s May 9, 2022 Order. *See* Dkt. No. 77.

A hearing was held on June 27, 2022 to discuss the revised settlement. *See* Dkt. No. 81. The Court refused to preliminarily approve the revised settlement too. *Id.* The Court made very clear to the parties that it would not approve any settlement that did not allow putative class members to opt out of the settlement. *Id.* The Court again encouraged the parties to take seriously its admonitions and return with a settlement that satisfied the Court.

Thereafter, the parties exchanged settlement positions. Plaintiffs urged Defendants to heed the Court’s admonitions, but Defendants remained entrenched. Plaintiffs write to provide the Court notice that the parties have no settlement agreement. It does not appear a settlement will ever be reached in this case that would be approved by the Court. The parties have ceased all settlement discussions. Plaintiffs are prepared to move the case forward on its merits.

1 **II. REQUEST TO CERTIFY THE CLASS**

2 Plaintiffs have filed three motions to certify a class in this case. *See* Dkt. Nos.
3 48, 60, 66. Defendants have not substantively opposed any of the class certification
4 motions. The Court indicated during the May 9, 2022 hearing (Dkt. No. 77) that it is
5 inclined to certify a Rule 23(b)(3) class in this case. Plaintiffs respectfully request the
6 Court do so without delay.

7 **III. REQUEST FOR TRIAL DATES**

8 Plaintiffs request the Court to set trial dates. All of the pretrial deadlines in the
9 operative Scheduling Order (Dkt. No. 47) have passed. Plaintiffs understand that
10 Defendants want to continue unnecessary litigation, including re-briefing summary
11 judgment motions. Apparently, Defendants have the audacity to believe the Court will
12 grant Defendants summary judgment over Plaintiffs' claims, which would result in the
13 putative class receiving zero benefits from this litigation, when the Court, acting as a
14 fiduciary to the putative class, refused to preliminarily approve a settlement that
15 would have provided the putative class with \$625,000.00. Defendants have taken
16 similarly unreasonable positions throughout this case. (Notably, Defendants are taking
17 similar unreasonable positions and employing similar gamesmanship in the *Diaz v.*
18 *Westco*, Case No. 2:20-cv-0270-ODW-AGRx matter, which is also pending before
19 this Court.) Defendants may also seek to employ other stratagems and seek to delay
20 the resolution of this case. These efforts should not be embraced. The facts of the case
21 are fully developed. Having refused to settle the claims, consistent with the Court's
22 admonitions, the only thing left to do is to try the case.

23 Plaintiff asserts the matter will be ready for trial by September 1, 2022. Trial is
24 anticipated to last five days. Plaintiff requests the first available trial dates after
25 September 1, 2022.

1 Respectfully submitted this July 5, 2022.

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3 /s/ Michael C. McKay
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16 *Attorneys for Plaintiffs and the proposed*
17 *Class*

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on this 5th day of July, 2022, I electronically transmitted
20 the attached document to the Clerk's Office using the CM/ECF System for filing and
21 transmittal of a Notice of Electronic Filing to all CM/ECF registered users in this
22 case.

23 /s/ Michael C. McKay
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